



The best tests in life are free

*ASWB
is urging
Advanced
Generalist
candidates to
take advantage
of an offer that
won't last long*

Social workers in 25 jurisdictions could be taking their exams for free—if they act soon, and if they are able to schedule an appointment to test before a fast-approaching June 30 deadline. The \$260 registration fee will be waived as part of an Association of Social Work Boards (ASWB) effort to strengthen the Advanced Generalist examination.

Earlier this month, ASWB sent out email reminders to all candidates registered for the Advanced Generalist examination, urging them to set a date for taking the free examination as soon as possible. Candidates have until June 30 to actually take the exam, but will sacrifice the opportunity to take the free version if they are unable to get an appointment by then. Available open times are filling up quickly.

The free exam offer is limited to only those jurisdictions that require the Advanced Generalist examination for licensure. Currently this list includes Alabama, Arkansas, Colorado, District of Columbia, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Virgin Islands, Washington, West Virginia, Wisconsin, and Wyoming.

Candidates for the program must follow all jurisdictional and ASWB requirements for pre-approval by first applying for licensure to the appropriate regulatory board. After receiving approval from the board, they can register with ASWB, which will waive the \$260 fee for one attempt. Subsequent attempts will require payment of the full fee.

In exchange for the free examination, candidates will be required to take a test that includes 110 nonscored pretest items mixed in with the standard scored 150 item Advanced Generalist test. The test is administered over a 6.5 hour timeframe, and delivered in two sections with a break in between. More information on the program can be found at www.aswb.org



Association Asides

The U.S. Congress has designed the Operations Building at Social Security Headquarters in Baltimore as the **ROBERT M. BALL** Federal Building. The late **BOB BALL** was the longest-serving Commissioner of Social Security, serving under three presidents, Kennedy, Johnson and Nixon. He was also the father of veteran New York board member **JONATHAN BALL**, who won the ASWB **SUNNY ANDREWS** Award for board service in 2007.

The information came from New York board Executive Director **DAVID HAMILTON**, who has lots of reasons to appreciate **JONATHAN** for his work on the board and with committees.

The new executive director for the Oklahoma State Board of Licensed Social Workers is **JAMES MARKS**. He has an enthusiastic recommendation from board chair **JOY LEUTHARD**, who says he's **VERY** excited about the new position. He'll be at the spring meeting in Vancouver.

There is another new board executive, **TONY ALDEN**, in Iowa.



Shannon and Nixie Bender-Bell

Remember the baby boomlet on the Examination Committee? **SHANNON BENDER-BELL** waited until Jan. 23 to produce **NIXIE JANE BENDER-BELL**. The baby's first name is from a water spirit from German lore; **JANE** was her maternal grandmother's middle name. While her father, **TYLER**, emailed extensive details in proud-papa euphoria, "She's here and she's beautiful!" he didn't forget important points. He wrote "Let's not forget the symbolism of **NIXIE** being born and the Flames winning two games in a row..."

And beyond the immediate baby boomlet, **AMANDA DUFFY RANDALL** is already counting the days until she becomes a grandmother – expected to be in May.

At FARB in New Orleans, Louisiana board chair **JOHN MCBRIDE** shared his own take on cell phones: his family's experiences indicate that they're so easy to lose he has a new app to locate his phone. Really. On his computer, he can find a lost phone by its own GPS.

Sounds like good advice from FARB speaker **JOE BAKER**, who recently shifted jobs to become executive director of the Florida Board

of Nursing. Until then, he had multiple boards. “I switched from doing six boards to one,” he said. “For those administrators who haven’t had only one board, I highly recommend it.”

Former ASWB President **ROGER KRYZANEK** continues his traveling ways, including a recent stay in Bali.

Undoubtedly **ROGER**, a Wisconsin native, is pleased at the outcome of this year’s Superbowl. Less pleased is ASWB Receptionist **LATONYA BANNISTER**, an avid Steelers fan who very good-naturedly put up with plenty of post-game ribbing at the office. She’s pictured here with Board Services Director **DWIGHT HYMANS** on the Friday before the big game. Yes, that’s a Colts jersey he’s wearing. Nobody had the heart to tell **DWIGHT** that his beloved Colts weren’t playing in the big game.



*Dwight Hymans and
LaTonya Bannister*



A summary of the work of the ASWB Board of Directors at its January 27, 2010 meeting

*From the
ASWB Board of
Directors*

The Association of Social Work Boards (ASWB) Board of Directors met in-person on Thursday, January 27 at the JW Marriott hotel in New Orleans, LA. Following is a recap of the activities of the board at the meeting.

Financial report: Board members reviewed 2010 ASWB financial statements through November.

Committee appointments: Committee appointments approved as proposed by ASWB President Amanda Duffy Randall (see related story in this issue of association news).

Committee charges: Committee charges approved as proposed by ASWB President Amanda Duffy Randall.

Strategic planning update: Board received report on implementation of various strategic planning initiatives at the Association office level. Board voted to institute a sponsorship program to fund up to five members of regulatory boards to attend the 2011 ASWB Spring Education Meeting (see related story in this issue of association news).

Outreach: Board members discussed communications with member boards, including questions from Virginia regarding the establishment and interpretation of supervision requirements. This topic continues to be reviewed by the ASWB Regulations and Standards (RAS) Committee.

2010 Annual Meeting evaluations: Board members reviewed attendee evaluations and discussed the role of a parliamentarian at the Annual Meeting. Board members agreed to assign the ASWB Bylaws Committee with researching the need for a parliamentarian.

Examination program reports: Board members received reports on test administration, testing program transition to Pearson VUE, score reporting, study guides/practice examinations, item writing program, and activities related to individual jurisdictions.

Association office report: Board members received reports on personnel, equipment, ACE, the Social Work Registry, MA applications, CE audits, the Public Protection Database, and other products, as well as reports on visits to individual jurisdictions (AR, CT, DE, FL, GA, KY, MN, NH, SC) and involvement with and activities of other groups including ATP, BPD, visitors from the Republic of China, CLEAR, CSWE, FARB, ICE and SSWR.

Upcoming meetings: Board members reviewed the 2011 ASWB meeting calendar.

Other topics – travel policy: Board members approved a change to the ASWB travel policy regarding reimbursement for calls made from hotel rooms while on association business. This provision has been removed from ASWB policy.



2011 committee appointments

This year's ASWB volunteers will be tending to ongoing issues while looking at challenges as diverse as international outreach and the conduct of the ASWB Annual Meeting

This year's roster of ASWB Committee appointees and election winners includes volunteers from 39 of the Association of Social Work Boards' (ASWB) 61 member jurisdictions, including 13 appointees who have never served ASWB before in a volunteer or paid capacity.

Appointment letters from ASWB President Amanda Duffy Randall were sent out during the first two weeks of February, after the ASWB Board of Directors approved a proposed committee list. The committees approved included appointments to the Approved Continuing Education (ACE) Committee, the Bylaws and Resolutions Committee, the Regulations and Standards (RAS) Committee, the Finance Committee, the Program and Education Committee, and a new group, the Foundation Editorial Review Committee, that will oversee the administration and monitoring of research grant projects funded by the American Foundation for Research and Consumer Education in Social Work Regulation. Appointments to the ASWB Examination Committee were finalized in October of 2010.

In addition to ongoing duties, several committees are being assigned charges for the coming year, some of which include reviewing issues around licensure for individuals with Ph.Ds in social work and no terminal masters degree in social work (RAS Committee), Creating and proposing opportunities for Spring Education Meeting attendance by social work regulators outside the United States and Canada (Program and Education Committee), and evaluating ASWB Bylaws around runoff election procedures (Bylaws and Resolutions Committee). All committee appointments are effective immediately, except for the ASWB Program and Education Committee, whose new members do not begin service until after the 2011 ASWB Spring Education Conference.

Appointed and elected volunteers are listed below, and are also available at www.aswb.org.

2011 ASWB Committees

Approved Continuing Education

Elaine Halsall (BC), chair

Nadine Bean (PA)

Mel Harrington (SD)

Michael Hickerson (LA)

Micki Lilly (NC)

Anwar Najur Durack (MI)

Teresa Young (AL)

Alison MacDonald (AB), board liaison

Bylaws and Resolutions

Emma Lucas-Darby (PA), chair
Doc Davis (AZ)
Joan Davis-Whelan (NL)
Jan Fitts (NE)
Claude Leblond (QC)
John McBride (LA)
Ronnie Saunders (IN)
Mary Macomber (FL), board liaison

Regulations and Standards

Richard Hazel, (SK) chair
Jane Anker (SC)
Shanna Burke (MA)
Fran Franklin (DE)
Jackie Johnson (MN)
Steven Pharris (TN)
Melinda Pilkinton (MS)
Jenise Comer (MO), board liaison

Finance

Tim Brown (TX), Treasurer and Chair
Carole Bryant (SK)
Pat Heard (NC), President Elect
Jim Merrow (MD)
Patrician O'Reilly (WV)
Michon Sax (ND)

Program and Education (term begins May, 2011)

Janice James (KY), chair
Margaret Hazlette (KY)
Marcia Heitz (IL)
Valerie Jones (IN)
Toni Limpicki (OK)
Martin Pittioni (OR)
Joyce Westphal (IA)
Anna Lynn Whitt (MS)
Donald Montoya (NM), board liaison

Board Member Training

Robin Jenkins (DC)
Richard Silver (QC)

Foundation Editorial Review

Amanda Randall (NE)
Jenise Comer (MO)
Alison MacDonald (AB)
Dorinda Noble (TX)
Saundra Starks (KY)
Nadine Bean (PA)

Nominating

Micki Lilly (NC)
Wade Tyler (LA)
Teresa Young (AL)
Pat Heard (NC), President-Elect

Examination

Carol Boyd (MS), co chair
Jane Matheson (AB), co chair
Melanie McCoy (MD), co chair
Jay Memmott (KS), co chair
Pam Abrams (AR)
Matilda Casler (NY)
Elizabeth Collardey (OH)
Trevor Gates (IL)
Keeva Hartley (MN)
Carl Hokansen (MN)
Nora Jessome (NS)
Deborah Jones (BC)
Barbara Kaufman (MN)
Leslie McCarl (PA)
Brent Meyer (FL)
Julie Niven (VA)
Linda Openshaw (TX)
Kristi O'Dell (MO)
Stacey Pelton (MD)
Monica Roth Day (MN)
Saundra Starks (KY)
Susanna Sung (MD)
Leana Torres (NC)
Amanda Randall (NE), board liaison



Let your guide(lines) be your conscience

By Dale Atkinson,
Partner, Atkinson
& Atkinson

On many occasions, social work board members or agency personnel are confronted with the dilemma of what administrative disciplinary sanctions are appropriate under a particular set of circumstances. Of course, the facts of each administrative prosecution are unique and each licensee under discipline will have very differing backgrounds. These differences provide room for debate as to what would be the appropriate sanction upon a finding of wrongdoing. Regulatory board members may have very diverse opinions as to what sanction to impose, however all board members should have the interests of the public in mind when fashioning a remedy.



In addition to the opinions of the board members, the law may also play a role in sustaining the sanction imposed by the administrative regulatory agency. Is consistency in sanctions appropriate in a public protection setting given the differing circumstances of each licensee, or is consistency legally required based upon past board actions? Consider the following.

In 2005, the California Department of Justice, Bureau of Medi-Cal Fraud was investigating the activities of a particular healthcare clinic and uncovered the actions of a “capper” who brought patients to a clinic for a fixed payment per patient (the delivery of patients to a healthcare practitioner for fees is referred to as capping). While executing a search warrant, the Department agents uncovered evidence that the capper may also have been capping patients to the clinic of a dentist (Licensee) licensed by the Dental Board of California (Board) in 1997.

In the continued investigation, law enforcement authorities uncovered additional evidence of the involvement of the Licensee in the capping scheme, including an analysis of the capper’s bank statements with significant deposits and canceled checks from the Licensee to the capper. Officers arrested the capper, who agreed to cooperate in the investigation of the Licensee.

The capper was fitted with and wore a wire while visiting the Licensee. The conversations during the visit implicated the Licensee in the scheme, leading to his arrest on felony charges of payment of an

unlawful rebate in violation of California law. In December 2007, the Licensee submitted a plea of nolo contendere and was convicted on of misdemeanor charges under the Business and Professions Code (a nolo contendere plea means the defendant does not admit but agrees not to contest the facts set forth in the criminal indictment). Imposition of a sentence was suspended and the Licensee was placed on summary probation for two years and ordered to pay \$1,000 in restitution.

In May 2008, the Board filed charges against the Licensee alleging violations of various portions of the dental practice act, including conviction of a substantially related crime, employing a solicitor, and unprofessional conduct. An administrative hearing was conducted in June 2009. As part of that hearing, the criminal docket sheet substantiating the criminal conviction was entered into the record without objection. The Licensee also testified at the hearing and denied ever agreeing to pay the capper for bringing him patients. The Licensee testified that he arranged payments to the capper for distributing advertising brochures and paid him by the hour. He also testified that no payments were made for patients who did not qualify for Medi-Cal or who did not need dental work. The law enforcement agents testified as to their conversations with the capper before the wiretap and admitted that cooperation by the capper would impact any criminal sentence.

Based upon the record of the administrative proceedings, the hearing officer found that proof by a clear and convincing standard had been established. The hearing officer found that the criminal conviction and facts underlying such conviction warranted the revocation of the Licensee's license to practice dentistry. The Board adopted the hearing officer's recommendation effective September 25, 2009. The administrative action was affirmed by the lower court and the Licensee appealed the matter to the court of appeals.

The court of appeals first reviewed the standard by which it assesses appeals of this type. It noted that the appealing party (Licensee) has the burden to demonstrate that the proceedings were unfair, in excess of jurisdiction, or showed prejudicial abuse of discretion.

First, the Licensee argued that the weight of the evidence does not support the conclusion that he violated the dental practice act, and that the Board abused its discretion in revoking his license. After clarifying the court of appeals standard of determining whether the weight of the evidence supports the Board decision, the court cited the Business and Professions Code that "a plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any misdemeanor substantially related to the qualifications, functions, or duties of a dentist...is deemed to be a conviction within the meaning of this section."

The court found that the Board's findings were overwhelmingly supported by the evidence, writing that "the circumstances of the crime are admissible in a licensure revocation proceeding, but not to impeach the conviction." The Licensee argued that the discrepancies or contradictions in the evidence merited reversal. In rejecting these arguments, the court held that credibility determinations are resolved by

the board and that merely arguing a differing conclusion as to the weight of such credibility determinations was not a basis for reversal. After reviewing the evidence, the court agreed with the lower court which found that the Licensee was convicted of a crime substantially related to the duties of a dentist.

Next the Licensee argued that the revocation of his license was an abuse of discretion by the Board. Citing previous judicial opinions, the court of appeals noted that the penalty assessed by the Board is reviewed on a de novo basis with no deference to the lower court's determination. The court asserted, however, that no abuse of discretion could be said to take place if reasonable minds can differ on the sanction in question. In assessing the potential for abuse of discretion, the court wrote, it must examine the extent of the harm to the public, the circumstances surrounding the misconduct, and the likelihood such misconduct will reoccur.

Importantly, the court noted the fact that the Board had established Disciplinary Guidelines to be considered in every case. The guidelines are contained in the regulations which mandate their consideration in determining Board imposed sanctions. The regulations do allow the board some latitude, and state that "Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the [Dental] Board in its sole discretion determines that the facts of a particular case warrant such deviation—for example: the presence of mitigating factors; the age of the case; evidentiary problems... ."

The guidelines used by the Board provide that "revocation is the maximum penalty for the Licensee's misconduct and the minimum penalty is stayed revocation, 30 days suspension, 5 years probation, and at least 50 hours of community service if the unlawful practice was extensive." Finally, the regulations instruct the Board to consider as aggravating or mitigating circumstances the nature and severity of the acts or crimes, evidence of any acts committed subsequent to the acts or crime under consideration, the time that has elapsed, the extent to which the licensee has complied with any terms already legally imposed, and any evidence of rehabilitation submitted by the licensee.

In reviewing the guidelines and the mitigating factors to be assessed, the court of appeals held that the Board did not adequately consider that the Licensee had no prior criminal record, that he complied with his criminal terms of probation (although it was not established that he completed his restitution obligations), and that his dental license had an unblemished record during his first eight years of practice. The court also noted that there was no evidence of poor quality service, unnecessarily performed services, no charges for services not performed, no fraud the part of the licensee, and no patient complaints.

The court noted that while capping is a serious crime, the record did not reflect how the capper procured patients for the licensee. It also noted that the Board may have concluded that the Licensee showed no remorse due to the actions of the Licensee's attorney, rather than that of the practitioner. While the attorney emphasized that the nolo contendere plea was not an admission of wrongdoing under certain

regulatory boards, this interpretation was wrong as applied to the dental board as set forth in the statute. The lack of Licensee's remorse was "merely a reflection of [the] attorney's flawed approach to the entire case dating back to the entry of a nolo plea, which was made without full knowledge of its possible consequences," the court wrote. Finally, the court noted the fact that during the wiretap conversations, the Licensee emphasized that he wanted to "make everything legal" in his attempts to contract with the capper.

Based upon these circumstances, which were driven in part by the presence of disciplinary guidelines set out in regulation, the court held that the imposition of a licensure revocation by the Board was an abuse of discretion. The court remanded the sanction portion of the administrative proceedings back to the Board.

This opinion highlights many notable issues for social work regulators to consider, including the meaning of a nolo contendere plea, the residual impact of such a plea on a subsequent administrative licensure proceeding, the attempt to re-litigate the facts surrounding a criminal conviction based upon a nolo plea, and the impact of disciplinary guidelines. While consistency in sanctions may not be required as part of a constitutional legal mandate, placement of disciplinary guidelines in statute or regulations may create obligations to consider on the part of the social work board.

Solak v. Dental Board of California, 2010 WL 4679616 (App. Ct. CA 2010)

Dale Atkinson is a partner with the Illinois law firm that is counsel to ASWB. He is also executive director of the Federation of Associations of Regulatory Boards (FARB).



ASWB exam program news

*It's still
early, but the
new test sites,
new testing
software—and
the new tests—
are looking
good*

After nearly two full months of delivering new tests through a new testing vendor, the Association of Social Work Boards (ASWB) is in a position to issue a resounding “so far...so good.” Although there are still some areas that are being adjusted and improved, the new systems seem to be working well in the most important areas—at the candidate and member board levels.

At the beginning of the year, the association launched new test content for the ASWB Bachelors, Masters, and Clinical examinations as a result of the most recent practice analysis. At the same time, ASWB began test administration with a new vendor, Pearson VUE. The change to Pearson VUE included the use of new test sites, changed question presentation screens for test-takers, and alterations in some of the data transfer procedures for regulatory boards. The new tests largely involved shifts in organization, with some changes to individual test content.

Through the first month of the year, a total of 1391 ASWB examinations have been administered at Pearson VUE test centers in the U.S. and Canada. These administrations follow a record year for ASWB testing, as over 34,000 examinations were administered—numbers likely boosted by many social workers’ interest in taking the test before the content outlines changed effective 2011.

“Generally, candidates have expressed a good deal of satisfaction with the test centers,” says ASWB Director of Candidate Services Pat Olinger. “At the testing end of things, we have received relatively few reports of administration problems, although we are still working with Pearson to iron out some details about how candidate scores are reported to our member boards.”

One of the biggest changes for candidates, Olinger explained, is that they can now actually make testing appointments online. She said that almost half of candidates scheduled so far have their appointments via the Internet.

According to ASWB Examination Program Manager Chuck Friedman, the new test content is also working well, but because test development is an ongoing process, there is still much work to be done. “We are currently preparing for our first Examination Committee meeting in the context of our relationship with our new vendor, Pearson VUE,” he explained, “and we are looking forward to some of the changes and improvements we will see over the next few months. We expect the changes to increase the efficiency of our Examination Committee meetings and maintain the high quality of our examinations.”

The changes to the actual tests also demanded that ASWB make the same kinds of changes to its study materials. Both the hardcopy study guides and the online practice exams were updated, including the development of a completely revised on-screen testing layout that is nearly identical to the actual testing software used by Pearson VUE for the ASWB examinations. Full-length practice examinations are now in place for the Bachelors, Masters, and Clinical tests.

Still on deck for change—the Advanced Generalist examination, with the new versions set for administration in 2012. Though the practice analysis for this level was completed at the same time as the rest of the ASWB examinations, in order to best respond to the more extensive changes required by the new Advanced Generalist examination, ASWB chose to use 2011 as a year in which to strengthen the association’s item banks to fully support the new content outline. This effort includes the offer of a free Advanced Generalist examination to all qualified candidates who agree to take an expanded version of the test by June 30, 2011 (see related story in this issue of association news).



Serious exam breaches can be just a click away.

Mary de Sousa has seen the future of test security, and it involves a whole lot of staring at computer screens—so much, in fact, that hiring a full-time employee to do just that may not be a bad idea. De Sousa, Vice President of Operations at the National Council of Architectural Registration Boards (NCARB), shared her group's experience with a mostly online examination security breach in a presentation delivered at the Federation of Associations of Regulatory Boards (FARB) Forum held in January.

FARB Forum 2011

According to de Sousa, fulltime internet monitoring has now become a necessity to help NCARB stay on top of leaks. The council created the position in the wake of a breach in which several graphic-intensive items were shared on the internet. In addition to the new position, the discovery of the leaked items triggered a series of NCARB staff efforts that established a matrix for evaluating the severity of a given leak, the “egregiousness” of the posting of an item, and the type of recourse that would be sought against the offending individual on behalf of the council.

De Sousa said that evidence of a breach began appearing in the summer of 2009 after NCARB released the latest version of its examinations, which involved both standard multiple choice and graphics-based items. Not long after the release, an employee discovered an online reference to the exam items with the posted solutions. Because of the nature of the NCARB examinations then online, she explained, it was clear that the item being shared was close enough to the actual test item to be considered a breach. “There was an item about a boathouse,” de Sousa said. “So when someone mentioned ‘the question about the boathouse’ and posted [the information], it was clear that that was the item.”

The Council was quick to act. De Sousa said that staff immediately began to recognize that not all postings were equally egregious—some individuals were sharing more generic information, while others were attempting to post verbatim reproductions of test items they had encountered. In order to begin dealing with the variety of posts, NCARB staff developed a matrix that tracked the poster to the exam he or she took, and then compared that exam to the information posted. Actions taken against these individuals ranged from issuing “cease and desist” letters to suspensions of up to five years. In all, a total of eight “serious breaches” were uncovered, De Sousa said.

In addition to going after the violators, De Sousa said that NCARB also “widely publicized” the actions it took. Once word got out, testing

candidates generally had an unexpected reaction. “We expected to get a lot of backlash from candidates,” she said, but by-and-large, the opposite was the case. “Many candidates were ticked off at what other candidates were doing,” and began helping to police message boards and other sites, and seeing to it that inappropriate material was removed.

The net result of the breach was a loss that NCARB puts at about \$1 million, de Sousa said. To guard against future breaches, the council now employs a full time architect whose primary job is to scour the internet for any item-sharing or other security violations. The efforts may not completely eliminate the possibility of future breaches, but at the very least, may help the council more quickly contain what sometimes seems like an inevitability.

The Association of Social Work Boards (ASWB) got a feeling for the challenges posed by internet postings in 2009, when a failed examination candidate started an email group that was described as a place for people to collaborate on the answers to “the toughest questions” they recalled from taking and failing the exams. The postings were discovered when the founder of the group contacted several member social work boards inviting them to circulate information on project. A total of five questions were posted before the site was taken down, and several participants—as well as the founder of the site—were identified and reported to their licensing boards. In the end, two questions were removed from the ASWB item banks after it was determined that the postings too closely resembled the scored items.



In Texas, the future is now

State law requires regulatory boards to give individuals with criminal records advance notice of how those crimes could affect future licensure decisions. Is it good gatekeeping, or troubling precedent?

It's not exactly time travel, but today's Texas Board of Social Work Examiners is now legally obligated to provide a glimpse into the decisions a future Texas Board of Social Work Examiners may make. Under a law adopted in 2009, the board is required to make an advance assessment about whether a prospective applicant's criminal background would impact a future licensure decision—an assessment that could take place years before the individual actually makes an application for licensure.

The requirement itself may give rise to more broad policy and regulatory debates, but from a day-to-day, operational standpoint, the mandatory program may not significantly change the way the Texas board goes about its business, says Texas social work board administrator Carol Miller. Miller says that the evaluations her board must now conduct aren't very different from an informal program that has been in place for years—one that has yet to result in any significant problems for the board.

For a \$50 fee, anyone enrolled or planning to enroll in a social work program can request that the Texas board review a special form and background information, and issue a "Criminal History Evaluation Letter" that lets someone know whether they would be considered ineligible for licensure once they've completed all other requirements. The program is intended to help potential applicants know, early on, whether they have committed a crime that would preclude them from licensure. If the requesting individual reports no crimes that carry such weight, the board must report that "a ground for ineligibility does not exist," according to the law. The letter is no guarantee that a license will be forthcoming, and is clear that information withheld—or subsequent criminal behavior—could affect this status.

According to Miller, even though the board has received no formal predetermination requests, the law isn't likely to change much about the way the board does business. "We've been doing some sort of predetermination for some years," she said, and from a more practical standpoint, the process has yet to produce a result in which the individual was told that he or she would not be eligible for licensure. "I have never seen the board have that [denial] response" to an applicant with a criminal conviction—although she admits the board has yet to deal with applicants with convictions for crimes like rape or murder.

While it is important for individuals to have a realistic understanding of their chances of becoming licensed well before they gamble time and money on a degree, predetermination practices such as the ones required by Texas may pose risks of their own, according to Federation

of Associations of Regulatory Boards Executive Director Dale Atkinson. In Atkinson's view, the predetermination process essentially requires today's board to make a decision that is best left to the board that will actually be faced by an applicant in the future. Legal and cultural positions on crimes can change over time, he said, and what may be considered marginally acceptable today may be determined to be unacceptable behavior by a future board. Using driving-under-the-influence of drugs or alcohol as an example, Atkinson said that what may not have been considered disqualifying criminal history in the past could very well be deemed disqualifying today. "Yet today's board may be bound by the decision of a past board," he said. Further, the mobility of students and applicants for licensure may be cause for concern. "Texas applicants 'cleared' in advance for licensure may attempt to use such pre-approval in other jurisdictions."

Besides, Atkinson says, character determinations related to an applicant's eligibility for licensure may turn on a kind of sum-total of criminal and noncriminal behaviors and records, and a board is typically well within its rights to deny an applicant if it believes that, on the whole, the applicant is not fit for practice. This decision could be made—at least theoretically—in the absence of any criminal convictions, he explained. "Providing predetermination statements gives the misleading impression that criminal convictions for major crimes are the only real impediments to fitness-to-practice decisions," he said. Atkinson predicts that applicants who received a "clear" predetermination and were later denied licensure will use that predetermination in legal challenges to the board decision.

"It is a difficult balance between providing advance eligibility notice to a would-be applicant for licensure and protecting the public with contemporary moral character or personal history analyses," Atkinson said. "Criminal history is not the only potentially disqualifying behavior involved in character assessments—the behaviors may include financial recklessness, bankruptcy, indebtedness, default on student loans, non-payment of child support or alimony, dishonesty in an educational setting, and others. But these applicants have no opportunity to a binding advance notice of licensure eligibility. That type of disparate treatment may promote litigation."

Miller says that both the past and current predetermination letters make it clear that even when the board finds no grounds for ineligibility, there is no guarantee of licensure in the future. Obviously, failure to fully disclose records initially can cause problems, she said, as well as any criminal activity that takes place after the determination and before licensure. Besides, she added, the board retains its ability to make "fitness-to-practice" decisions that are (or can be) independent of criminal history. "I just don't foresee it as a problem," she said.

The predetermination program was first developed in the state's Department of Licensing and Regulation (TDLR), which oversees regulation of 29 professions including auctioneers, cosmetologists, elevator inspectors and well drillers. Visitors to the TDLR website can not only learn about the process, but also view a list of particular

crimes that would be problematic for certain professions. A prospective polygraph examiner or trainer, for instance, could see that crimes involving “breach of computer security” may prohibit licensure; while someone hoping to one day be licensed as a used auto part recycler may encounter problems if he/she committed a crime involving “racketeering, organized crime, criminal influence, or money laundering.” According to the TDLR website, the reason these particular crimes may pose an obstacle for certification that “persons with the predisposition and experience in committing crimes depriving others of money or property through a criminal enterprise, or have experience concealing the results of those crimes, would have the opportunity to engage in further similar conduct” as an auto parts recycler (<http://www.license.state.tx.us/crimconvict.htm#blr>).

The Texas Department of State Health Services, which houses the social work board, does not include a similar criminal activity menu on its site. Instead, the Department’s website provides the necessary forms and directs visitors to contact the relevant licensing board.

While the state describes the requirement as a way to allow individuals “to avoid unnecessary hardship or costs if their criminal history is a ground for license ineligibility,” sheer logistics may get in the way of the good intentions. According to Miller, the reviews required in developing a Criminal History Evaluation Letter are turned around fairly quickly, but students may not wait for a determination before registering—and paying for—classes. Miller is unsure whether schools of social work in the state will begin to forego their own background-checking work and simply rely on the state program as a screening tool, but she’s hoping this will not be the case. If that happened, she said, “our workload would be dramatically increased.”



Patience, persistence, and commitment

Digging deeper pays off for a Chicago reporter—and the citizens of Illinois

**FARB
Forum
2011**

Somebody appreciates regulators.

Megan Twohey, a staff reporter for the Chicago Tribune, told an audience of regulators at the Federation of Associations of Regulatory Boards (FARB) Forum that “being here is like a kid in a candy store.” But her compliment might have been a tiny bit back-handed. Twohey has spend the past year or so having people involved in professional regulation refuse to give her comments, interviews, and generally the time of day.

She has been embroiled in a series of investigative articles on the virtually free ride that suspect medical doctors have been getting in Illinois. But her efforts have succeeded not only in having long overdue criminal charges brought to bear, but in having legislation in her state overhauled. This has made her less than popular with the Illinois Department of Financial and Professional Regulation and its medical disciplinary board, and perhaps with even more so with the doctors’ lobby that operates in the capital of Springfield.

But on the other hand, Twohey’s long series of in-depth articles conveying the experiences of patients who had made accusations of sexual attacks by their physicians not only had legal results but made the patients finally feel heard and vindicated. Twohey wrote of a doctor who had been accused of sexual assault or inappropriate contact with female patients by seven women, beginning in 2000, and continued practicing in 2010. She wrote of a huge backlog of untested DNA in cases of alleged rape involving physicians, and of law enforcement officials who declined to investigate charges of rape by doctors of patients.

The young reporter, who worked for the Milwaukee Journal Sentinel, the National Journal and the Moscow Times before joining the Tribune in 2007, pointed out that she realizes there are issues of confidentiality that boards must deal with in keeping with the laws of their states. But she said that public protection requires a large measure of openness. “If you want people to know what you do – how do you communicate?” she asked.

She was blocked on many fronts during her investigation. She had difficulties getting to the right people, and getting interviews with them once she did. When she filed requests under Freedom of Information laws, she said, she would sometimes be held off for months. She said later that her paper is very committed to investigative reporting, and that she realizes that the ability to commit the time and resources to such a project is not the usual case in these turbulent media times.

In the extensive printed material that Twohey provided to the FARB audience, one article on “voiceless victims” quoted the Dallas-based

Federation of State Medical Boards as issuing guidelines instruction boards to “place a high priority on the investigation of complains of sexual misconduct due to patient vulnerability” and stressing that a single case is enough to go to a formal hearing. It said that Illinois law does not even require the professional regulation department and police to share complaints with each other.

What’s come of all this? Some board and criminal actions against doctors that are long overdue; a continuing of the nine-months suspension that the doctor accused by seven patients received as his only punishment; an increased emphasis on investigation of complaints; a new Illinois state law that requires the testing of all DNA evidence from reported sex crimes; and the still incomplete trek of a “Patients’ Right to Know” Act through Illinois’ legislature.

The last item listed, passed by the Illinois House in January, was sent on to the Senate. The bill would give patients access to detailed histories of doctors, whether they have been convicted of a crime or made a malpractice payment in the past five years. The state provided those histories until last year, when they were removed from the Department of Financial and Professional Regulation’s website. Information remains available to the public on whether the regulatory agency has disciplined a doctor.

In its arguments against having more detailed profiles available to the public, the State Medical Society has said that keeping the information drains limited state funds, and that the profiles are available from other sources on the Internet. But those in support of the state-maintained system have said that the other sources are unreliable and incomplete.

A check on the name of Dr. Bruce Sylvester Smith, the man accused by seven women of inappropriate contact or even of rape, found him on a large range of sites of the “find a doctor” variety. But one give him a compiled rating of “excellent,” several posted only averages of surveys on questions of the “ease of getting an appointment” and “would you recommend this doctor?” variety. One listed an award made to Smith in 2009. Another site took three clicks to get to a warning. Only one had a fairly prominent “sanctions history found!” posted.

The strength of the campaign that Twohey and the Tribune have carried on was derived from the very personal nature of the interviews with women. The reporter said that she was painstakingly careful about the information that she used, and that she insisted on meeting with and talking personally to the accusers so that she could weigh their credibility for herself. She said she is unable to access the Healthcare Integrity and Protection Data Bank (HIPDB).

Comments from the audience included one from Mary Macomber, chair of the Florida Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling, and the public member of the ASWB Board of Directors. “We want the public to know,” she said. Her board “encourages students to come” to hearings, and tells them “We don’t want to see you on that side of the table again” in the position of a professional subject to discipline.



Are educational programs making the grade when it comes to producing qualified professionals?

Responsibility 101:

Education and regulation can't escape being bedfellows, even if the relationship is less than cozy.

The major question that developed in a panel discussion of "Education: Understanding its role" at the Federation of Associations of Regulatory Boards (FARB) Forum in New Orleans was this: If the blanket of public protection is allowed by education to slip, where does regulation step in? (Okay, you're right, that's enough of the metaphor. Almost.)

The blankets are in fact in a tangle, according to the speakers. The rise of for-profit schools and online classes, decimated budgets, standards set in law that stress quantity rather than quality, the pressures to accept students and the pressures to graduate students, have all taken their toll on the ability of conventional education to do its job of preparing people for careers. Students graduate, theoretically ready for professional careers, who simply are not.

Regulators have often stressed that educators need to be gatekeepers, discouraging those who aren't suited for professions from trying to get into them. But now, "There is more and more pressure to take more and more students," said Dr. Robin Walton, a professor in the College of Health Professions at Marshall University in West Virginia. "But it's a catch-22 even after that – we should be identifying people who shouldn't graduate, but we're also under pressure to graduate people."

Walton is also president of the West Virginia Board of

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Materials available for the 2011 FARB Forum were unusually extensive, and rich with information. An example linked to the role of education:

A HealthDay News article reported on the comparison of foreign-trained medical doctors with U.S. trained doctors. U.S. citizens who receive their training at home have good outcome records, and foreign doctors who are trained in their own countries have good outcomes.

Not-so-good outcomes have been compiled by U.S. citizens who are trained abroad. Doesn't seem to fit? "U.S. citizens who want to become doctors but are not admitted to a U.S. medical school often seek degrees abroad," and those are the physicians with the problem outcomes, according to John Norcini, president and CEO for the Foundation for Advancement of International Medical Education and Research in Philadelphia. In other words, someone who is deemed by a medical school at home not to have a good chance of succeeding in the field might in fact not succeed terribly well.

Examiners for Professional Registered Nurses, so she sees both sides. For her, a great test for letting someone through nursing school is the thought “What if I was in an accident and woke up and you (you being a person who is both educated and licensed to practice as a nurse) are bending over me – would I say ‘Omigod!’?”

That test is a viable consideration in most of the areas of discussion. An “omigod” reaction can come to someone with a lack of knowledge, skill and ability, or to someone whose character and background should have ruled out being a nurse, social worker or doctor.

Dr. Dorinda Noble, moderator of the panel, vice-chair of the Texas social work board and a member of the ASWB Board of Directors, questioned the concept that all education is considered equal. “Education is like a snake – it leaves behind its old skin – it’s a messy lifelong process, but it’s not easy to capture what is true education.” And, she admitted, “getting a degree is another thing altogether.”

State regulations can force educators to think more about numbers than about education, with strictly applied outcome measures and their effect on funding, Noble said. Moreover, there are people who cannot take advantage of “the education that we’re accustomed to.” Because of time, money or geographical location, they may be drawn in by for-profit educators that do not deliver what is needed.

“People can be trained for careers in a short time, but what if the school doesn’t have the credentials?” Many for-profit schools budget more for advertising than for designing and delivering usable degrees.

“Many students lose” from quickie courses, online or otherwise, because they need people to relate to, Noble said. Walton agreed; “They can lose so much that goes with education – socialization into the profession, first – online classes are great, but I learned more from other students. People don’t know how to talk to people” in the absence of at least some form of interaction with others.

Also at issue is the question of students with criminal backgrounds – at what point, and from what source, should they learn whether their past may interfere with their future? All of the worries about the current state of education apply – for-profit schools, pressure to accept and graduate students.

“Board reliance on education” is a fact, according to Joe Baker Jr., executive director of the Florida Board of Nursing. But what is the board to do if a potential licensee comes with degree in hand, having put forth all the effort to get that degree, and there is something in his or her background that adds up to unfitness to practice?

“If you work in a school, you get a background check,” Noble explained, but this is much less likely if you’re a student. She believes there is increasing support for having colleges and universities be up-front with students; if the person has a felony conviction for child abuse, there will be many careers in health care that are closed to him or her. Students, Noble added, have a sense of entitlement that society tends to hand them – if this kind of important information is left to a licensing board to reveal, no one wins.



A new ASWB program will help members participate in the Spring Education Meeting

The budget picture for most Association of Social Work Boards (ASWB) member boards continues to be gloomy, but that may not prevent a few regulators from attending the 2011 ASWB Spring Education Meeting: a new program announced recently will provide up to five sponsorship opportunities for members of regulatory boards to attend the Vancouver conference this May with all expenses paid by ASWB.

In a recent email circulated to member board administrators and participants on the ASWB members email group, ASWB Executive Director Donna DeAngelis announced that the ASWB Board of Directors had voted to designate funds to create a sponsorship program targeted at jurisdictions and individuals that have had limited attendance at an ASWB conference. “The ASWB spring meeting is a unique experience that provides valuable continuing education in social work regulation,” DeAngelis wrote, “and the ASWB board wants to ensure attendance for this important event in the face of funding cuts and other challenges being experienced by ASWB members.”

Consideration will be given to individuals who fill out an application, and final decisions will be based on criteria that include whether the member board has been active with ASWB (preference given to less active boards); whether the applicant has attended a previous Spring Education Meeting (preference given to new attendees); whether the applicant has been newly-appointed (preference given to newly appointed members); and the jurisdiction’s overall budgetary and travel constraints. Jurisdictions in which the government has placed a ban on travel, regardless of funding source, will not qualify for the sponsorship, because ASWB cannot override any governmental restrictions imposed on board members.

The sponsorship application form can be found [here](#). The deadline for submission is April 1, 2011, with selected recipients notified by April 6, 2011.



A real fuzzkill

*Join ASWB
for a Spring
Education
Conference
devoted to all
things fuzzy—
in regulation,
that is.*

There are plenty of things out there that are best when fuzzy: puppies, for instance. Slippers. Glove linings, sometimes. Peach skins, arguably. Also powder puffs, Buckingham Palace Guard Busby hats, and Jerry Garcia.

But there's one thing that shouldn't be fuzzy: social work boundaries. That, and pudding.

The Association of Social Work Boards (ASWB) will be concentrating on the former when it hosts this year's Spring Education Meeting—titled “Furry Vengeance: How Regulators Deal With Fuzzy Boundary Issues.” The conference is set for May 12-15 in Vancouver, British Columbia, and will feature a presentation by Dr. Gary Schoener, Director of Counseling and Training at the Walk-in Counseling Center in Minneapolis, MN. Schoener is an internationally-recognized expert on identifying and dealing with boundary violations, and has been working with licensed professionals around these issues for over 30 years.

Schoener's Friday morning presentation will focus on how to investigate and assess boundary violations, but the ASWB conference will look at these issues from other perspectives as well. The discussion will begin in the afternoon of Thursday, May 12, with opening remarks leading into a panel discussion that will help to set the context for the entire conference. An ASWB-sponsored welcome dinner will follow the Thursday afternoon opening session.

After Schoener's presentation in the morning of May 13, the afternoon's session, titled “Eat, Pray, Regulate: When Religious of Cultural Views Enter into Professional Practice,” will bring together panelists to discuss how—or possibly whether—the world of professional regulation can live alongside potentially competing belief systems. The Saturday program will be a half-day session that will include two presentations—one on boundary issues as they relate to social media and other technologies, and a second panel discussion on “strategies to help regulators keep emotional and mental order as they uphold the law.” The afternoon will be open for exploring Vancouver, or for joining fellow attendees on a harbor cruise.

The last day of the conference will focus on “the secret life of the licensee” and include a discussion on testing and licensure, as well as a presentation on the most recent ASWB Practice Analysis. Included in this session will be a presentation on research sponsored by ASWB's research arm, the American Foundation for Research and Consumer Education in Social Work Regulation. Research grant recipient Dawn

Lewis Apgar, Ph.D, will present findings from her work on knowledge of and attitudes about licensure among social work students and faculty in New Jersey.

There is no registration fee for the ASWB Spring Conference, though attendees do pay for their travel, meal, and lodging expenses. This year, the association will be offering up to five fully-funded sponsorships to regulatory board members who would otherwise not be able to attend the Spring Conference (see related story, this issue of association news).

Vancouver, host of the 2010 Winter Olympics, is known as one of the most beautiful cities in North America, and was recently ranked fourth among the world's cities with the highest quality of living. For more information on the conference, including a preliminary agenda, details on how to register for the meeting, sign up for the cruise, and other logistics issues, visit the ASWB website at www.aswb.org.



The Sunset Factor

*Staying
prepared for
legislative
scrutiny could
be the key to
survival*

By Donna
DeAngelis, LCSW, ACSW
Executive Director,
ASWB

The legal regulation of professions is coming under attack from all sides. There have been an increasing number of news stories in print, on the air waves, and on the Internet, about both sides of licensing. In some cases the regulatory board is taken to task for not doing its job quickly or thoroughly enough to protect the public. On the other hand, there is criticism of unnecessary over-regulation of activities that should be left to the marketplace to decide. There is pressure to ease or exempt requirements for immigrants and for people for whom English is not a first language. On top of all this many regulatory boards in the U. S. are part of governmental systems that have severe financial problems that affect the functioning of the boards.

*from the
staff*

Adding to these pressures is the simple fact that the work of a regulatory board is not usually in the spotlight unless something goes terribly wrong. Boards are noticed by the public when they come under attack, not when we are doing a good job and things are going well.

Still, the value of the social work regulatory board is clear. We regulate a profession that works with vulnerable people, often people who are in crisis, and easily exploited. So what is a board to do to ensure its continued existence in order to protect the public? The answer, I believe, may be to prepare for the worst: Sunset Review. The sunset review process, as many of us know, is basically an administrative board audit written into statute to occur every so many years, or specifically called for by the legislature. During a sunset review, a board must essentially make a case for its existence, sometimes in the face of a climate fairly hostile to regulation in general. Nobody on a board or a board's staff enjoys these reviews, but the process of preparing for this kind of scrutiny can actually make a board stronger. And there is no reason to wait for the announcement of an impending review to gain that kind strength: a regulatory board that is continually preparing for a sunset review will have an easy time making a case for its existence if and when the review takes place.

Sunset is the regular assessment of the continuing need for a regulatory board and its functions. Through sunset review the statutes authorizing the board can be updated to match current functions. Sunset review concerns three key questions:

- Are a board's functions still needed?
- Does the board represent the best organizational structure to perform these functions?

- Is the board's statute up-to-date, or does it limit its ability to operate efficiently and effectively?

A social work regulatory board should be able to answer the questions that sunset review may pose by keeping easily accessible records of activities such as: number of applications processed, approved, denied, pending; number of complaints received, investigated, adjudicated, pending; the average length of time it takes to process an application and a complaint. Board member qualifications, training, attendance, participation should also be documented. This type of data kept up-to-date and easily accessible will impress the legislature on how efficiently the board operates, or the board can document the need for more resources if it is having difficulty meeting its objectives.

Sunset review will look at ways the board's regulations could be less burdensome and still protect the public. It will also evaluate whether the board uses and encourages public participation, and whether the board's policies address conflicts of interest.

The outcome could potentially be recommendations to improve the board's operations by strengthening regulations and enforcement, eliminating unnecessary licenses, establishing across-the-board standards, including public membership, prohibitions on conflicts of interest, and increased opportunities for public input.

The issue of board survival hit home with me just recently. In January, I was privileged to be able to observe the Florida Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling in the course of its two-day meeting. Under the leadership of its chairperson, Ms. Mary Macomber, J.D., who also sits on the ASWB Board of Directors in the public member position, the board impressed me with its knowledge and professionalism. It was evident that every member present took seriously his or her responsibility to protect the public. The board heard a particularly serious and difficult complaint against a mental health counselor and thoughtfully deliberated to come up with sanctions that gave the counselor every chance to correct his behavior while at the same time protecting the public by suspending his license to practice. This is not easy work and I congratulate the Florida board and its staff on a job well-done.

The Florida board, like so many others, does tremendous and important work—much of which will never be seen (or perhaps even understood) by those hoping to tear down regulation for one reason or another. The professionalism, thoughtfulness, and diligence of our member boards are something one needs to witness—and something that isn't always quantifiable as a line item in a sunset audit. It is because of this important and hard-to-define work that I think boards should constantly attend to documenting all those other, more data-driven elements that can be documented.

So don't dread sunset review or panic when it is scheduled. Prepare for it continually, not just by doing the good jobs that you do, but by documenting your work thoroughly and regularly. We need you!